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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ENVIRONMENTAL PROTECTION
INFORMATION CENTER, et al.,

Plaintiffs,

vs.

ALECIA VAN ATTA, et al.,

Defendants.

) Case No. 3:22-cv-03520-TLT

)

) **DECLARATION OF THOMAS E.**

) **WHEELER IN SUPPORT OF**

) **PLAINTIFFS' MOTION FOR**

) **ATTORNEYS' FEES, COSTS, AND**

) **OTHER EXPENSES**

)

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1 I, Thomas E. Wheeler, hereby declare:

2 1. I am the Executive Director of Environmental Protection Information Center (“EPIC”)
3 based in Arcata, California. EPIC is a registered tax-exempt organization under Section
4 501(c)(3) of the Internal Revenue Code. EPIC has seven paid staff members.

5 2. EPIC sought legal representation to undertake this case, but was unable to find a qualified
6 attorney who would agree to represent it at base rates under the Equal Access to Justice Act
7 (“EAJA”). EPIC is currently involved in approximately five lawsuits against federal agencies in
8 federal courts. Based on my experience seeking qualified attorneys to agree to undertake these
9 cases, it is nearly impossible to find qualified attorneys in California willing to litigate against
10 federal agencies in federal court under EAJA base rates. Indeed, in my experience, for even
11 relatively simple civil lawsuits (which this case was not) in the forum, qualified attorneys
12 routinely charge far higher than EAJA base rates.

13 3. I am an attorney of record in this case, and served as both local counsel (for the purposes
14 of pro hac vice admission and participation; to participate as to clients and tribes; and to
15 thoroughly review papers) and co-counsel with Peter M. K. Frost and Sangye Ince-Johannsen.
16 They did the lion’s share of the work, but I conferred frequently with them as to case strategies
17 and theories; I reviewed papers before filing; and I otherwise worked as legal counsel.

18 4. I attach to this declaration as Exhibit A my timesheets in this case. My time is tracked in
19 increments of six minutes. I seek 28.90 hours of time in this case. I seek rates under EAJA of
20 \$217.54 for 2021, \$234.95 for 2022, \$244.62 for 2023, and \$251.84 for 2024 and 2025. I seek a
21 total of \$6,641.35.

22 I declare under penalty of perjury that the foregoing is true and correct. 28 U.S.C. §
23 1746(2).

24 Executed on April 11, 2025. /s/ Thomas E. Wheeler
25 Thomas E. Wheeler
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Date	Attorney	Description	Rate	Time	Omit	Amount
3/20/21	Wheeler	Email Frost Safe Harbor and Shasta situation [.3]	217.54	0.30		65.26
4/2/21	Wheeler	Read Frost email about Shasta, discuss w staff resource and expert help, respond Frost [.4]	217.54	0.40		87.02
4/6/21	Wheeler	Read Frost email about representation, call board member, discuss w staff [.5]	217.54	0.50		108.77
5/6/21	Wheeler	Email Frost to set up potential client call; discuss tribes w Amber [.4]	217.54	0.40		87.02
5/18/21	Wheeler	Call Frost whether to cancel conference; Karuk; read cancel email [.2]	217.54	0.20		43.51
5/25/21	Wheeler	Call Frost re Earthjustice co-representation; its state case; difficulty [.2]	217.54	0.20		43.51
5/26/21	Wheeler	Conference call clients [1]; email Frost re NCB finding [.1]	217.54	1.10		239.29
9/10/21	Wheeler	Call Frost re Earthjustice [.2]	217.54	0.20		43.51
9/17/21	Wheeler	Conference call clients re tribes, the Karuk settlement, venue, retainer agreement terms, Shasta City meeting [.9]	217.54	0.90		195.79
9/29/21	Wheeler	Call Frost about Yurok, its other cases, group it left, required confidentiality [.4]	217.54	0.40		87.02
11/8/21	Wheeler	Email Frost can't make meeting [.1]	217.54	0.10		21.75
11/29/21	Wheeler	Confer board re litigation approval, any issues [.3]; email Frost [.1]	217.54	0.40		87.02
12/10/21	Wheeler	Multiparty conference call Shasta and basin issues and strategy, litigation [2.2]	217.54	2.20		478.59
1/11/22	Wheeler	Call Frost about tribal council and fish staff, Big Springs dam and projects, case strategy [.6]	234.95	0.60		140.97
1/15/22	Wheeler	Call Yurok about case [.3]; email Frost about call [.1]	234.95	0.40		93.98
1/19/22	Wheeler	Read Frost email about Yurok/Belchik [.1]	234.95	0.10		23.50
1/26/22	Wheeler	Email Frost call conflict [.1]	234.95	0.10		23.50
2/9/22	Wheeler	Call Frost NOI and tribal interests/concerns streambed permits, comments [.6]	234.95	0.60	0.30	70.49
2/16/22	Wheeler	Conference call WELC and other clients [.7]	234.95	0.70		164.47
2/22/22	Wheeler	Call Frost communications w Belchik, any required notice [.3]	234.95	0.30		70.49
2/24/22	Wheeler	Read retainer agreement, notes [.2]; Call Frost re tribes [.1]	234.95	0.30		70.49
2/25/22	Wheeler	Call Frost about retainer [.1]	234.95	0.10		23.50
3/8/22	Wheeler	Call Frost Friends' board of directors changes [.2]	234.95	0.20		46.99
3/29/22	Wheeler	Read email and revised retainer [.1]	234.95	0.10		23.50
3/31/22	Wheeler	Conference call with clients - possible settlement with NMFS, data and information needs [.8]	234.95	0.80		187.96
4/5/22	Wheeler	Conference call NMFS and clients about disputes and settlement [1.3]	234.95	1.30		305.44
5/25/22	Wheeler	Read Frost email - improper action area	234.95	0.10		23.50
6/2/22	Wheeler	Conference call clients - status of research and claims, strategy	234.95	1.00		234.95
6/10/22	Wheeler	Read portions of draft complaint, email Frost about same [.4]	234.95	0.40		93.98
6/13/22	Wheeler	Call Frost standing allegations, declarants, tribes [.2]	234.95	0.20		46.99
6/15/22	Wheeler	Call Frost assignment to Mag Hixon, whether consent, pro hac vice [.1] email Frost about media [.1]	234.95	0.20	0.10	23.50

7/5/22	Wheeler	Read reassignment to Corley [.1]	234.95	0.10		23.50
7/11/22	Wheeler	Read litigation hold letter, discuss w staff [.3]; email Frost acknowledge [.1]	234.95	0.40		93.98
8/18/22	Wheeler	Attorney and client status and strategy call [.8]	234.95	0.80		187.96
8/29/22	Wheeler	Read reassignment to Thompson [.1]	234.95	0.10		23.50
9/22/22	Wheeler	Conference call about settlement and ADR, in person meeting, strategy, possible outcomes [1.1]	234.95	1.10		258.45
9/23/22	Wheeler	Email Frost our bylaws, note any concerns [.1]	234.95	0.10		23.50
9/29/22	Wheeler	Confer staff re tribal standing declarant, phone Frost about same and any public trust duties, who can assert	234.95	0.50		117.48
11/1/22	Wheeler	Call Frost about meeting [.1]	234.95	0.10		23.50
1/6/23	Wheeler	Read AR filing, email clients [.1]	244.62	0.10		24.46
1/9/23	Wheeler	Call Frost about AR review, any challenge/supplementation, client help [.4]	244.62	0.40		97.85
2/2/23	Wheeler	Status/strategy call with co-counsel and clients [.8]	244.62	0.80		195.70
2/22/23	Wheeler	Read draft opening motion SJ, propose edits [1.7]	244.62	1.70		415.85
4/25/23	Wheeler	Read Fed Defs opening/opposition papers, prepare notes to circulate [1.8]	244.62	1.80		440.32
5/22/23	Wheeler	Read draft reply brief, respond Frost [.6]	244.62	0.60		146.77
5/25/23	Wheeler	Read final reply brief [.4]	244.62	0.40		97.85
6/24/23	Wheeler	Call Frost about standing decs [.2]	244.62	0.20		48.92
6/27/23	Wheeler	Confer Frost about oral argument [.2]	244.62	0.20		48.92
7/11/23	Wheeler	Read District Court order, notes [.4]; Call Frost same [.1]	244.62	0.50		122.31
7/12/23	Wheeler	Conference call co-counsel/clients about case result, strategy [1]	244.62	1.00		244.62
8/3/23	Wheeler	Read draft FRCP 59 motion, suggest edits [.3]	244.62	0.30		73.39
8/5/23	Wheeler	Read final FRCP 59 motion [.1]	244.62	0.10		24.46
9/11/23	Wheeler	Read Fed Defs response to FRCP 59 motion, notes [.3]	244.62	0.30		73.39
10/30/23	Wheeler	Read court order no oral argument [.1]	244.62	0.10		24.46
1/12/24	Wheeler	Phone Frost our state SHA argument [.2]	251.84	0.20	0.20	-
1/23/24	Wheeler	Read court order granting FRCP 59 motion [.1]	251.84	0.10		25.18
1/25/24	Wheeler	Conference call co-counsel, clients about 59 order, permitted activities, any appeal [1]	251.84	1.00		251.84
4/11/25	Wheeler	Call Frost fees motion; EAJA rates; review timesheets and edits/omissions, return [1.1]	251.84	1.10		277.02
				28.90	0.60	6,641.35